European Company Law

Text, Cases and Materials

Taking a text, cases and materials approach, this is the first and only student textbook on European Company Law, providing an insight and shedding light on its future development. Text boxes for explanatory commentary, cases and materials – such as EU legislation, official documents and excerpts from scholarly papers – are clearly differentiated from the text, allowing the student quickly to identify sources. Each chapter also includes suggestions for further reading. Structured in seven parts, the book explores a diversity of topics, from what European company law is, the common rules for establishing, financing and accounting in a company and corporate governance, to the structure of the Societas Europaea Statute, EU company law directives, capital markets and takeover law and insolvency. The book is an essential resource for the growing number of graduate courses on European Company Law, European Business Law and Comparative Corporate Law.

Nicola de Luca is Professor of Law at the Second University of Naples and Luiss Guido Carli, Rome. His research and teaching interests include business and company law, bankruptcy, corporate governance, shareholders’ rights and insurance law. His publications include four monographs, a co-authored company law textbook, and numerous journal articles.
European Company Law

Text, Cases and Materials

NICOLA DE LUCA
LUISS Guido Carli – Rome
To Grazia, and to all my students.
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<td>AG</td>
<td>Aktiengesellschaft</td>
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<tr>
<td>BBG</td>
<td>Undesbeschaffung GmbH (Austrian Federal Procurement Agency)</td>
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<td>BGHZ</td>
<td>Bundesgerichtshof in Zivilsachen</td>
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<tr>
<td>CESR</td>
<td>Committee of European Securities Regulators (now ESMA)</td>
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<td>CFO</td>
<td>Chief Financial Officer</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<td>CLD</td>
<td>Company Law Directive</td>
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<td>COMI</td>
<td>Centre Of Main Interests</td>
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<tr>
<td>CRD</td>
<td>Capital Requirements Directive</td>
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<td>DG ENTR</td>
<td>Directorate-General for Enterprise and Industry</td>
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<td>d. lgs.</td>
<td>Decreto legislativo</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<td>EEC</td>
<td>European Economic Community</td>
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<td>EC</td>
<td>European Community</td>
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<td>ECIG</td>
<td>European Corporate Governance Institute</td>
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<td>ECHR</td>
<td>Convention for the Protection of Human Rights and Fundamental Freedoms</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>ECL</td>
<td>European Company Law</td>
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<td>ECOFIN/Ecofin</td>
<td>Economic and Social Affairs Council</td>
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<td>EEC</td>
<td>European Economic Community</td>
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<td>EEIG</td>
<td>European Economic Interest Grouping</td>
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<td>EESC</td>
<td>European Economic and Social Committee</td>
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<td>ESMA</td>
<td>European Securities and Markets Authority</td>
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<td>EU</td>
<td>European Union</td>
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<td>FC</td>
<td>Foreign Company</td>
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<td>FE</td>
<td>Fundatio Europaea (European Foundation)</td>
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<td>FSAP</td>
<td>Financial Services Action Plan</td>
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<td>Acronym</td>
<td>Description</td>
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<td>GAAP</td>
<td>Generally Accepted Accounting Principles (US)</td>
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<td>GmbHHG</td>
<td>Gesellschaft mit beschränkter Haftung (Law on limited-liability companies, Germany)</td>
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<tr>
<td>I+R</td>
<td>Interest and Royalty</td>
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<tr>
<td>IAS</td>
<td>International Accounting Standard</td>
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<td>IASB</td>
<td>International Accounting Standards Board</td>
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<td>IASC</td>
<td>International Accounting Standards Committee</td>
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<td>IFRIC</td>
<td>International Financial Reporting Interpretations Committee</td>
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<td>IFRS</td>
<td>International Financial Reporting Standards</td>
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<td>IFSC</td>
<td>International Financial Services Centre</td>
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<td>IMI</td>
<td>Internal Market Information System</td>
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<td>IPO</td>
<td>Initial Public Offering</td>
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<td>ISA</td>
<td>International Standards on Auditing</td>
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<td>LLP</td>
<td>limited-liability partnership</td>
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<td>LSA</td>
<td>Ley de Sociedades Anónimas (now LSC)</td>
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<td>LSC</td>
<td>Ley de Sociedades Comerciales</td>
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<td>MAD</td>
<td>Market Abuse Directive</td>
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<td>MBCA</td>
<td>Model Business Corporation Act</td>
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<td>ME</td>
<td>Mutua Europaea (European Mutual Society)</td>
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<td>MEP</td>
<td>Member of the European Parliament</td>
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<td>MiFID</td>
<td>Markets in Financial Instruments Directive</td>
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<td>MTF</td>
<td>Multilateral Trading Facility</td>
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<td>NA</td>
<td>National Association (Bank of America)</td>
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<td>NYSE</td>
<td>New York Stock Exchange</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<tr>
<td>OTC</td>
<td>Over-The-Counter (transaction)</td>
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<td>OTF</td>
<td>Organised Trading Facilities</td>
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<td>PLC</td>
<td>Public Limited Company</td>
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<tr>
<td>RGDN</td>
<td>Dirección General de los Registros y del Notariado (Spanish General Direction of Register)</td>
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<tr>
<td>ROL</td>
<td>recapitalise or liquidate</td>
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<td>SBA</td>
<td>Small Business Act</td>
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<td>SBI</td>
<td>Social Business Initiative</td>
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<td>SCE</td>
<td>Societas Cooperativa Europaea (European Cooperative Society)</td>
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<td>SE</td>
<td>Societas Europaea (European Private Company)</td>
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<td>SEC</td>
<td>Securities and Exchange Commission (US)</td>
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<td>SIC</td>
<td>Standards Interpretation Committee</td>
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<td>SLIM</td>
<td>Simpler Legislation for the Internal Market</td>
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<tr>
<td>SME</td>
<td>Small and Medium-sized Enterprise</td>
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<tr>
<td>SPE</td>
<td>Societas Privata Europaea (European Private Company)</td>
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<td>SUP</td>
<td>Societas Unius Personae (European Single-member Company)</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>UCIT</td>
<td>Undertakings for the Collective Investment in Transferable securities</td>
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<td>UGB</td>
<td>Unternehmensgesetzbuch (Austrian commercial code)</td>
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<td>UK</td>
<td>United Kingdom</td>
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<tr>
<td>UmwG</td>
<td>Law on Company Transformations (Germany)</td>
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<tr>
<td>UNCITRAL</td>
<td>United Nations Commission on International Trade Law</td>
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<td>US</td>
<td>United States</td>
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<tr>
<td>VAT</td>
<td>value-added tax</td>
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<td>WFBV</td>
<td>Law on Formally Foreign Countries (Netherlands)</td>
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## Law Journals

- **Brook. J. Int'l L.** Brooklyn Journal of International Law
- **Bus. Law.** Business Lawyer
- **Cal. L. Rev.** University of California Law Review
- **Cardozo J. Int'l & Comp. L.** Cardozo Journal of International and Comparative Law
- **Cardozo L. Rev.** Cardozo Law Review
- **Colum. J. Eur. L.** Columbia Journal of European Law
- **Colum. L. Rev.** Columbia Law Review
- **Comm. Mkt L. Rev.** Common Market Law Review
- **Cornell L. Rev.** Cornell Law Review
- **Del. J. Corp. L.** Delaware Journal of Corporate Law
- **EBL** European Business Law
- **EBLR** European Business Law Review
- **EBOR** European Business Organization Law Review
- **ECFR** European Company and Financial Law Review
- **ECL** European Company Law
- **EC Tax Rev.** EC Tax Review
- **Geo. L.J.** Georgetown Law Journal
- **Harv. Int'l L.J.** Harvard International Law Journal
- **Harv. L. Rev.** Harvard Law Review
- **Hous. J. Int'l L.** Houston Journal of International Law
- **Indus. L.J.** Industrial Law Journal
- **Int'l L. & Mgmt Rev.** International Law & Management Review
- **J. Corp. Fin.** Journal of Corporation Finance
- **JFE** Journal of Financial Economics
- **J. Int'l L.** Journal of International Law
- **JLEO** Journal of Law, Economics, & Organization
- **Mich. L. Rev.** Michigan Law Review
- **MLR** Modern Law Review
List of Acronyms and Abbreviations

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<th>Full Name</th>
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Preface

This book deals with European Company Law. Whilst many are (more or less) aware of what a company is, and of the fields that company law covers, a clarification of the adjective ‘European’ is required.

Similarly to the US or other federal systems, companies established and/or operated in any of the Member States of the European Union (hereafter EU) are regulated by the company laws of the Member States. However, on the one hand, the company laws of the Member States must comply with some rules and principles which constitute the body of a supranational set of laws delivered by the EU institutions, binding as either hard or soft law. On the other hand, notwithstanding that the EU is no sovereign State nor a federation of States, its institutions may issue acts directly binding all citizens and companies established and/or operating in the EU, thereby prevailing over the company laws of the Member States.

Therefore, the adjective ‘European’ qualifying company law here is intended to make direct reference to the legal rules and principles of company law enshrined in the sources of law of the EU. In turn, this book is not intended to deal with the individual/domestic company laws of EU Member States.

Since European Company Law has become an important study matter for lawyers of EU Member States, many European (and not only European) universities offer courses in European Company Law, or broader courses including European Company Law (such as European Business Law or Comparative Company Law). Therefore, this book aims to give an insight into the existing European Company Law and shed some light on its foreseeable future development. It includes seven Parts. Part I explains what European Company Law is, where it comes from and where it is potentially going. Part II illustrates how companies formed under EU Member States’ laws may enjoy of the freedom of establishment and of that to provide services. Parts III–IV describe the common rules for establishing, financing and accounting in a company. Part V concerns corporate governance, including management and control, shareholders’ rights and general meeting issues. Parts III–V reflect the structure of the SE (Societas Europaea) Statute, whilst also discussing the EU Company Law Directives. Part VI gives a brief overview of capital markets and takeover law. Part VII deals with
merger and division, as well as with winding-up, liquidation and insolvency of companies (based on the Regulation on Insolvency Proceedings). Each Part is further divided into chapters and paragraphs. The book is designed so that the reader may easily recognise explanatory commentary, cases and materials (EU legislation, European Court of Justice cases, official documents, or excerpts from scholarly papers) as well as references for further reading (scholarly papers or other cases and materials): these references are mainly designed to support more in-depth study (papers or final dissertations).

Indeed, this book is expressly designed to support law students – both in residence and those visiting on exchange programme basis – and to help familiarise them with European Company Law. The book itself is the outcome of many years teaching this subject at Luiss University – Guido Carli in Rome and is dedicated to my wife Grazia, and to all my students. I wish to thank those who gave me their class notes, read earlier drafts and provided me with valuable comments from a ‘consumer perspective’. I am deeply indebted to Andrea Napolitano and Matteo Fittante, former students, now research assistants, not only for all their help in the research and in proofreading, but also for the discussions on many of the topics in this book. A special thanks goes to Benjamin Button-Stephens, also a former visiting student at Luiss University – Guido Carli, for the linguistic revision. This book would have not come to fruition without their support. The usual disclaimers apply.